

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket No. 14364US04)

In the Application of:

Joseph Kubler et al.

Serial No.: 10/760,057

Filed: January 16, 2004

For: HIERARCHICAL DATA COLLECTION
NETWORK SUPPORTING PACKETIZED VOICE
COMMUNICATIONS AMONG WIRELESS
TERMINALS AND TELEPHONES

Examiner: Albert Chou

Group Art Unit: 2416

Transmitted via the Office electronic filing system
May 27, 2010.

**REQUEST FOR RECONSIDERATION OF
USPTO RECALCULATION OF
PATENT TERM ADJUSTMENT IN VIEW OF WYETH**

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Sir:

The applicant respectfully requests reconsideration of the patent term adjustment indicated in the enclosed print-out of the current United States Patent and Trademark Office (USPTO) patent term adjustment determination from PAIR and the *Decision On Request For Recalculation Of Patent Term Adjustment In View Of Wyeth And Notice Of Intent To Issue Certificate Of Correction* (PTOL-549G (04/10)) ("the Decision") mailed April 28, 2010 respecting the present application. This application for patent term adjustment is being filed within the later of one month or 30 days after the mailing date of the Decision.

This request is accompanied by the fee set forth in § 1.18(e) (\$200).

This request includes below a statement of the facts involved in sufficient detail to allow the United States Patent and Trademark Office (USPTO) to verify the correct patent term adjustment.

The Applicant's calculated patent term adjustment is 1278 days. The Decision reported a patent term adjustment of 1258 days. Thus, the Applicant is requesting an increase in the patent term adjustment.

The basis under 37 CFR § 1.702 for the adjustment is as follows:

Positive Patent Term Adjustment

Three Year Guarantee

(35 USC § 154(b)(1)(B))

The USPTO calculation of the patent term adjustment under the three-year deadline for issuing a patent after its filing date was 630 days. The Applicant disagrees with this determination because the patent term adjustment on this ground should instead be 631 days, minus 0 days consumed by an appeal, for a net adjustment of 631 days.

Specifically, the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR shows that:

- the actual filing date of the application was January 16, 2004,
- the third anniversary of the actual filing date was January 16, 2007,
- the first request for continued examination of the application under 35 USC 132(b) was filed on October 8, 2008.

Reductions in Patent Term Adjustment

First Alleged Submission of a Delaying Paper After Allowance

37 CFR § 1.704(c)(10)

The applicant is contesting the following application(s) of 37 CFR § 1.704(c)(10) to reduce the patent term adjustment in the present application due to a paper filed after the Notice of Allowance has been mailed.

The USPTO is believed to be characterizing the paper filed by the Applicant entitled, Miscellaneous Incoming Letter, on June 29, 2009, after the June 18, 2009 mailing date of the Notice of Allowance, as an alleged amendment under § 1.312 or other paper delaying prosecution. The reduction of PTA asserted by the USPTO is 18 days. The basis for this length of PTA reduction is

unclear because no paper was mailed or filed 18 days before or after June 29, 2009.

The Applicant's position is that this determination is incorrect for the following reason(s):

- 37 CFR § 1.704(c)(10) is not applicable to reduce the patent term adjustment in the present application because the alleged amendment under § 1.312 or other paper delaying prosecution should be exempted from this rule as explained by the Official Gazette Notice dated June 26, 2001, entitled: *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*. 1247 OG 111, June 26, 2001. Specifically, the alleged amendment under § 1.312 or other paper delaying prosecution, listed as a "Post-Allowance Communication – Incoming" in the image file wrapper and entitled, "Response to Notice of Allowance," is not the type of "paper[] submitted after a "Notice of Allowance" is mailed, [that would] interfere[] with and delay[] the patent issue process to such a degree as to constitute a "failure to engage in reasonable efforts" to conclude processing or examination of an application." *Id.* The USPTO did not respond to it and it did not call for a response. Also, this type of paper filed after allowance is not one of the following papers that the above-cited Notice identified as interfering with and delaying the patent issue process: "(1) a request for a refund, (2) a status letter, (3) amendments under 37 CFR 1.312, (4) late priority claims, (5) a certified copy of a priority document, (6) drawings, (7) letters related to biological deposits, and (8) oaths or declarations."
- The 18-day reduction in patent term adjustment is also incorrect because the USPTO did not ever respond to this paper, and did not mail any paper either 18 days (the stated PTA reduction) or 26 days (the stated 18 days plus 8 days of overlap with another PTA reduction for the 312 amendment) after June 29, 2009.

- The correct amount of reduction is submitted by the Applicant to be 0 days.

Second Alleged Submission of a Delaying Paper After Allowance

37 CFR § 1.704(c)(10)

The applicant is contesting the following application(s) of 37 CFR § 1.704(c)(10) to reduce the patent term adjustment in the present application due to a paper filed after the Notice of Allowance has been mailed.

The USPTO is believed to be characterizing the amendment under § 1.312 filed on June 29, 2009, as a paper delaying prosecution. The USPTO is believed to be characterizing the paper mailed by the USPTO on July 6, 2009, as a response to this paper. The reduction of PTA asserted by the USPTO is 8 days.

The Applicant's position is that this determination is incorrect. The correct amount of reduction is submitted by the Applicant to be seven days, which is the difference between the correct filing and mailing dates stated above, but not exceeding four months.

Net Patent Term Adjustment

The changes requested by the Applicant to the USPTO patent term adjustment determination in the DECISION ON REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION (PTOL-549G (04/10)) ("the Decision") mailed are as follows:

**Three Year Guarantee
(35 USC § 154(b)(1)(B))**

	Patent Term Adjustment (days)
USPTO Calculation in Recalculation Request	630
Applicant Calculation	631

- **First Alleged Submission of a Delaying Paper After Allowance**

37 CFR § 1.704(c)(10)

	Patent Term Adjustment (days)
USPTO Calculation in Recalculation Request	18
Applicant Calculation	0

- **Second Alleged Submission of a Delaying Paper After Allowance**

37 CFR § 1.704(c)(10)

	Patent Term Adjustment (days)
USPTO Calculation in Recalculation Request	8
Applicant Calculation	7

Conclusion

The Applicant requests modification of the patent term adjustment as indicated above. As shown in the enclosed modified version of the USPTO

Patent Term Adjustment calculation on PAIR, the net patent term adjustment proposed by the Applicant is thus 1278 days.

Please charge any fees or credit any overpayment of fees presently required to McAndrews, Held & Malloy, Ltd., Deposit Account No. 13-0017.

Respectfully submitted,

McANDREWS, HELD & MALLOY, LTD.

By: /Kevin E. Borg/
Kevin E. Borg
Reg. No. 51,486
Agent for Applicant

Dated: May 27, 2010

McANDREWS, HELD & MALLOY, LTD.
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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

Mail Date: 04/28/2010

Applicant	: Joseph J. Kubler	: DECISION ON REQUEST FOR
Patent Number	: 7633934	: RECALCULATION of PATENT
Issue Date	: 12/15/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 10/760,057	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 01/16/2004	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1258** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days**, whichever is longer, to file a request for reconsideration of this patent term adjustment calculation. See 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4). No extensions of time will be granted under 37 CFR 1.136.

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this patent term adjustment calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this patent term adjustment calculation including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right to review in the United States District Court for the District of Columbia of the USPTO patent term adjustment determination, patentee must ensure that he or she also take the steps required under 35 U.S.C. 154(b)(4)(A) in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. 154(b)(4)(A).

Any questions concerning this decision should be directed to the Office of Patent Legal Administration at 571-272-7702.

10/760,057	HIERARCHICAL DATA COLLECTION NETWORK SUPPORTING PACKETIZED VOICE COMMUNICATIONS AMONG WIRELESS TERMINALS AND TELEPHONES	05-26- 2010::16:05:55
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Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/760,057

Filing or 371(c) Date:	01-16-2004	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	12-15-2009	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	1258
USPTO Adjustment(days):	-	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
04-23-2010	Petition Decision - Granted		
04-22-2010	Petition Entered		
12-15-2009	Recordation of Patent Grant Mailed		
11-24-2009	Issue Notification Mailed		
10-07-2008	PTA 36 Months	630	
12-15-2009	Patent Issue Date Used in PTA Calculation	47	
11-16-2009	Dispatch to FDC	⬆	
08-11-2009	Dispatch to FDC	⬆	
08-11-2009	Dispatch to FDC	⬆	
07-24-2009	TC Return to Pubs	⬆	
07-24-2009	Mail Miscellaneous Communication to Applicant	⬆	
07-24-2009	Miscellaneous Communication to Applicant - No Action Count	⬆	
06-30-2009	Pubs Case Remand to TC	⬆	
07-06-2009	Application Is Considered Ready for Issue	⬆	
07-06-2009	Mail Response to 312 Amendment (PTO-271)	⬆	
07-05-2009	Response to Amendment under Rule 312	⬆	
06-29-2009	Amendment after Notice of Allowance (Rule 312)		8
06-29-2009	Miscellaneous Incoming Letter		18
06-29-2009	Issue Fee Payment Verified		
06-29-2009	Issue Fee Payment Received		
06-18-2009	Mail Notice of Allowance		
06-17-2009	Notice of Allowance Data Verification Completed		
06-17-2009	Case Docketed to Examiner in GAU		
06-17-2009	Document Verification		
06-17-2009	Examiner's Amendment Communication		
05-13-2009	Date Forwarded to Examiner		
03-26-2009	Response after Non-Final Action		28
03-26-2009	Request for Extension of Time - Granted	⬆	
11-26-2008	Mail Non-Final Rejection		⬆
11-25-2008	Non-Final Rejection		

10-20-2008	Information Disclosure Statement considered	
10-08-2008	Information Disclosure Statement considered	
10-20-2008	Information Disclosure Statement considered	
10-20-2008	Information Disclosure Statement (IDS) Filed	
10-08-2008	Electronic Information Disclosure Statement	
10-18-2008	Date Forwarded to Examiner	
10-18-2008	Date Forwarded to Examiner	
10-08-2008	Request for Continued Examination (RCE)	5
10-18-2008	Disposal for a RCE / CPA / R129	⬆
10-08-2008	Request for Extension of Time - Granted	⬆
10-08-2008	Information Disclosure Statement (IDS) Filed	⬆
10-08-2008	Workflow - Request for RCE - Begin	⬆
10-06-2008	Case Docketed to Examiner in GAU	⬆
07-03-2008	Mail Final Rejection (PTOL - 326)	⬆
07-02-2008	Final Rejection	
06-18-2008	Date Forwarded to Examiner	
05-19-2008	Response after Non-Final Action	31
05-19-2008	Request for Extension of Time - Granted	⬆
01-18-2008	Mail Non-Final Rejection	671
01-16-2008	Non-Final Rejection	⬆
08-23-2007	Information Disclosure Statement considered	⬆
11-16-2006	Information Disclosure Statement considered	⬆
10-18-2006	Information Disclosure Statement considered	⬆
06-23-2006	Information Disclosure Statement considered	⬆
05-09-2006	Information Disclosure Statement considered	⬆
10-17-2007	Withdraw Flagged for 5/25	⬆
10-15-2007	Flagged for 5/25	⬆
08-23-2007	Reference capture on IDS	⬆
08-23-2007	Information Disclosure Statement (IDS) Filed	⬆
08-23-2007	Information Disclosure Statement (IDS) Filed	⬆
06-18-2007	Case Docketed to Examiner in GAU	⬆
11-16-2006	Electronic Information Disclosure Statement	⬆
11-16-2006	Information Disclosure Statement (IDS) Filed	⬆
10-18-2006	Reference capture on IDS	⬆
10-18-2006	Information Disclosure Statement (IDS) Filed	⬆
10-18-2006	Information Disclosure Statement (IDS) Filed	⬆
10-19-2006	Case Docketed to Examiner in GAU	⬆
10-17-2006	Case Docketed to Examiner in GAU	⬆
10-10-2006	Case Docketed to Examiner in GAU	⬆
10-10-2006	Case Docketed to Examiner in GAU	⬆
10-05-2006	Case Docketed to Examiner in GAU	⬆

06-23-2006	Electronic Information Disclosure Statement	⬆
06-23-2006	Information Disclosure Statement (IDS) Filed	⬆
05-15-2006	Preliminary Amendment	⬆
05-15-2006	Preliminary Amendment	⬆
05-09-2006	Reference capture on IDS	⬆
05-09-2006	Information Disclosure Statement (IDS) Filed	⬆
05-09-2006	Information Disclosure Statement (IDS) Filed	⬆
03-21-2006	Case Docketed to Examiner in GAU	⬆
01-27-2006	Case Docketed to Examiner in GAU	⬆
01-18-2005	Miscellaneous Incoming Letter	⬆
01-26-2005	Case Docketed to Examiner in GAU	⬆
09-22-2004	Case Docketed to Examiner in GAU	⬆
06-23-2004	IFW TSS Processing by Tech Center Complete	⬆
01-16-2004	Preliminary Amendment	⬆
06-23-2004	Case Docketed to Examiner in GAU	⬆
04-23-2004	Application Return from OIPE	⬆
04-23-2004	Application Return TO OIPE	⬆
04-23-2004	Application Return from OIPE	⬆
04-23-2004	Application Is Now Complete	⬆
04-23-2004	Application Return TO OIPE	⬆
04-22-2004	Application Dispatched from OIPE	⬆
04-23-2004	Application Is Now Complete	⬆
03-16-2004	Cleared by L&R (LARS)	⬆
03-05-2004	Referred to Level 2 (LARS) by OIPE CSR	⬆
01-30-2004	IFW Scan & PACR Auto Security Review	⬆
01-16-2004	Initial Exam Team nn	⬆

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PATENT TERM ADJUSTMENT SPREADSHEET

Ser. No. 10/760,057 Docket No. 14364US04

DATE	EVENT	PTO Calculation		Applicant Calculation	
		PTO Delay	Appl. Delay	PTO Delay	Appl. Delay
4/23/2010	Petition Decision - Granted				
4/22/2010	Petition Entered				
	Recordation of Patent Grant				
12/15/2009	Mailed				
12/15/2009	Patent Issue Date Used in PTA Calculation	47		47.00	
11/24/2009	Issue Notification Mailed	*		*	
11/16/2009	Dispatch to FDC				
	4 months from response to 312 amendment				
10/29/2009	312 amendment	*		*	
8/11/2009	Dispatch to FDC				
8/11/2009	Dispatch to FDC	*		*	
7/24/2009	TC Return to Pubs	*		*	
	Mail Miscellaneous Communication to Applicant	*		*	
7/24/2009	Mail Miscellaneous Communication to Applicant	*		*	
	Miscellaneous Communication to Applicant - No Action Count				
7/24/2009	Application Is Considered	*		*	
7/6/2009	Ready for Issue				
7/6/2009	Mail Response to 312	*		*	7.00
7/6/2009	Amendment (PTO-271)				
7/5/2009	Response to Amendment under Rule 312	*		*	
6/30/2009	Pubs Case Remand to TC	*		*	

